**BEFORE THE APPEALS BOARD**
**FOR THE**
**KANSAS DIVISION OF WORKERS COMPENSATION**

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| **SHIRLEY A. COOPER**<br>Claimant<br><br>VS.<br><br>**GEARY COMMUNITY HOSPITAL**<br>Respondent<br><br>AND<br><br>**KANSAS HOSPITAL ASSOC. WCF, INC.**<br>Insurance Carrier | ) | Docket No. 1,029,177 |

## ORDER

Respondent and its insurance carrier request review of the July 25, 2006 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

### ISSUES

At the preliminary hearing, the respondent admitted the claimant sustained a work-related accident on February 2, 2006. Respondent further agreed claimant suffered a slip and fall accident on February 16, 2006, but denied the second accident arose out of and in the course of employment. The Administrative Law Judge (ALJ) found the claimant's slip and fall accident on February 16, 2006, was compensable.

The respondent requests review of whether the claimant's February 16, 2006 accidental injury arose out of and in the course of employment. Respondent argues the claimant was not working or returning to her work at the time of her slip and fall accidental injury.

Claimant argues she was on the employer's premises at the time of the injury which occurred as she was walking into the building to clock in and report to work. Claimant further argues the respondent was negligent in the maintenance of the sidewalks during inclement weather. Claimant requests that the ALJ's Order be affirmed.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

The claimant had two accidental injuries within a couple of weeks. The first occurred on February 2, 2006, when she slipped on the wet surface of a recently mopped floor and fell. She injured her head, neck, shoulders, back, hips and legs. The claimant was treated with medication in the respondent's emergency room and then released to go home. An occupational health nurse saw the claimant due to the emergency room's recommendations for physical therapy. Restrictions were placed on the claimant of no lifting greater than 20 pounds, no sweeping, mopping or overhead work which the employer accommodated by providing a helper for the claimant.

On February 16, 2006, the claimant sustained another fall on an icy sidewalk injuring her face, left shoulder, hip, knee, ankle and leg. She had arrived at work about 30 minutes early so she went to the cafeteria to get a cappuccino and then went outside to have a cigarette in the smoke shack. The smoke shack is the designated and sole place respondent's employees are allowed to smoke.

As she was smoking the claimant realized she needed to find out from her daughter what time she needed to pick up her granddaughter. As a result after she finished her cigarette, she took a different route back to the building to clock in and hopefully intercept her daughter, who also worked in the same building, as each headed toward their work sites within the building. The route was somewhat longer but still on the respondent's premises. However, the claimant slipped and fell on the sidewalk before she made it back into the building.

Claimant was admitted to the hospital for one day and then released with instructions to follow up with her primary care physician. On March 3, 2006, the claimant notified her employer about her restrictions. Respondent was not able to accommodate the restrictions and claimant has been off work since that time.

Claimant agreed that had she not wanted to see her daughter she would have returned to the building to clock in on the same route she had used to leave the building to go to the smoke shack. But there was no indication in the record that claimant was required to clock in at only one specified area in the building.

Initially, it should be noted that not every accident that occurs on an employer's premises is compensable under the Act. Before an accidental injury is compensable under the Act, the accident must arise out of and occur in the course of employment.

> If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an

> employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act. . . .[1]

The Act does not define "arising out of and in the course of employment" other than to state what shall not be construed as satisfying the definition.

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. . . .[2]

The Courts have provided additional guidance and have held that an accident "arises out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Accordingly, an injury arises out of employment if it arises out of the nature, conditions, obligations, or incidents of the employment.[3] Additionally, the phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the employee was at work in the employer's service.[4]

Moreover, the Kansas Supreme Court has held that once an employee reaches an employer's premises, the risks to the employee are causally connected to the employment. Therefore, an injury sustained on the premises may be compensable even if the employee has not yet begun work. In *Thompson*, the Court, while analyzing what risks were causally related to a worker's employment, wrote:

> The rationale for the "going and coming" rule is that while on the way to or from work the employee is subjected only to the same risks or hazards as those to which the general public is subjected. Thus, those risks are not causally related to the employment. . . . However, **once the employee reaches the premises of the**

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[1] K.S.A. 44-501(a).

[2] K.S.A. 2005 Supp. 44-508(f).

[3] *Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

[4] *Id.* at Syl. ¶ 1.

> **employer, the risks to which the employee is subjected have a causal connection to the employment, and an injury sustained on the premises is compensable even if the employee has not yet begun work**. . . .[5]

Kansas law has long held that accidents occurring on an employer's premises while an employee is walking into work may arise out of and in the course of employment.[6] In *Teague*, the Kansas Supreme Court determined that it was "quite clear" that an employee's slip and fall on ice while walking into work and the resulting injuries were incidental to the employment and compensable under the Workers Compensation Act. And in *Chapman*,[7] the Kansas Supreme Court stated, "[i]f the employee is injured on the way to or from work while on the employer's premises or on a special hazard route, the employee is eligible for coverage [under the Act]."

In the claim at hand, this Board Member concludes claimant's accident arose out of and in the course of employment with respondent. At the time of the accident, claimant was walking toward the building to clock in and go to work when she slipped and fell. Accordingly, this Board Member concludes claimant's accident arose out of the nature, conditions, and incidents of employment. Considering the time, place, and circumstances surrounding the accident, this Board Member concludes that the accident occurred in the course of claimant's employment.

In short, claimant was injured on respondent's premises while reporting to work. Although claimant may have taken the path she selected in the hopes of crossing paths with her daughter, nonetheless, she was headed into the building to clock in and report to work. Therefore, claimant is entitled to receive workers compensation benefits for the February 16, 2006 accident and any related and direct consequences.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[8] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.[9]

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[5] *Thompson*, 256 Kan. at 46 (emphasis added).

[6] *Teague*, 181 Kan. 434.

[7] *Chapman v. Beech Aircraft Corp.,* 258 Kan. 653, 655, 907 P.2d 828 (1995).

[8] K.S.A. 44-534a.

[9] K.S.A. 2005 Supp. 44-555c(k).

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Bryce D. Benedict dated July 25, 2006, is affirmed.

**IT IS SO ORDERED.**

Dated this 31st day of October 2006.

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BOARD MEMBER

c: Dan McCulley, Attorney for Claimant
Douglas A. Dorothy, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge